

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

CONNOR BOWE,

Plaintiff,

v.

Case No: 16-CV-746

EAU CLAIRE AREA SCHOOL
DISTRICT, DAVID OLDENBERG
(in his individual capacity), and
TIM O'REILLY,
(in his individual capacity),

Defendants.

COMPLAINT

NOW COMES the plaintiff, Connor Bowe, by Paul A. Kinne of Gingras, Cates & Luebke, who hereby submits the following:

NATURE OF PROCEEDINGS

1. This case is being brought pursuant to the Equal Protection Clause of the United States Constitution, Title II of the Americans with Disabilities Act, the Rehabilitation Act, and 20 U.S.C. sec. 1681 et seq. (Title IX) whereby the plaintiff alleges that the Eau Claire Area School District discriminated against the plaintiff by depriving him of educational opportunities on account of his disability (autism), his gender (male) and his membership in a "class of one."

JURISDICTION AND VENUE

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. sec. 1331 because all claims arise under federal law.

3. Venue is proper under 28 U.S.C. sec. 1391 in that all of the acts alleged to have

been committed by the defendants occurred within the Western District of Wisconsin.

PARTIES

4. Plaintiff Connor Bowe (C. Bowe) is a resident of the state of Wisconsin, and at all times relevant hereto, resided within the Eau Claire Area School District boundaries. His date of birth is March 7, 1997.

5. Defendant Eau Claire Area School District (ECASD) is a public school district organized and operating under the laws of the State of Wisconsin.

6. David Oldenberg (Oldenberg) has, at all times relevant hereto, been the Principal at the ECASD school attended by C. Bowe. All acts and omissions attributable to him in this Complaint were intentional, taken within the scope of his employment, under color of state law, and in his individual capacity.

7. Tim O'Reilly (O'Reilly) was C. Bowe's middle school principal. At all times relevant hereto, O'Reilly has been an ECASD employee. All acts and omissions attributable to him in this Complaint were intentional, taken within the scope of his employment, under color of state law, and in his individual capacity.

FACTUAL BACKGROUND

8. As of January 1, 2011, C. Bowe attended ECASD schools.

9. C. Bowe is a male heterosexual.

10. C. Bowe is disabled; he suffers from autism.

11. At some point prior to February, 2011, ECASD officials Kevin Stevens and Tim O'Reilly informed some of C. Bowe's classmates and parents that C. Bowe suffered from autism, without the consent of C. Bowe's parents, Glen Bowe (G. Bowe) and Pegi Bowe (P. Bowe).

12. On a recurrent basis, C. Bowe's classmates engaged in the following behavior, at the times indicated and at other times: referred to him as "douche bag" (December, 2010); referred to him as "stupid" (December 2010, February, 2014); verbally berated and mocked him (January, February, November, December 2011); referred to him as "fat" and "weak" (February, 2011, February, 2014); accused him of having "mental deficiencies" (February, 2011); physically confronted him (February, 2011); informed C. Bowe that "nobody likes" him (February, 2011); told C. Bowe to "shut up" (February, 2011); told him to "go away" (February, 2011); called him a "fag" (October, 2011, April, 2013); called him a "pussy" (December, 2011, May 2012); called him a "shit stain" (December, 2011); put gum in his hair (October, 2011); mockingly laughed at him (October, 2011); physically assaulted him (October, 2011); made death threats directed at him (December, 2011, May, 2012); told him "nobody likes you" (January, May 2012); told him "to go fucking die" (January, 2012); threw objects at him (April, 2012); told him he should kill himself (May, 2012); threatened to injure him (May, 2012); called him "bubble butt" (May, 2012); left a bag of feces at C. Bowe's home (September, 2013); and threw eggs at C. Bowe's home (November, 2013).

13. The behavior described in the preceding paragraph was a continuation of abuse that started earlier. Examples of harassment that occurred prior include C. Bowe's classmates calling him gay, a queer, a fag, a pussy and "butt boy." They would also ask him if he was wearing a bra. They struck C. Bowe on the buttocks and shoved him. They referred to C. Bowe's "big butt." They would loudly blow musical instruments in his face. They called him "Captain Twinkie." They called him a "fat ass" with "no life," and they also referred to him as "Santa." One student made a stabbing motion at C. Bowe with the student's hand as if to stab C. Bowe. Students called Bowe names generally. They threw balls at his head.

14. The Bowes complained to school officials many times about the harassment described above, including but not limited to January, May, September, October, 2010; October, November, December 2011; January, April, May, June 2012; April, September, November 2013; May, November 2014; January, 2015; March, 2015; and May, 2015. The majority of these complaints were made to Oldenberg, or he knew of them. Earlier complaints were made to O'Reilly, or he knew of them.

15. At no point did anyone at ECASD take any action to end the harassment. Officials at ECASD were deliberately indifferent to the harassment and mistreatment C. Bowe faced.

16. In the fall of 2011, C. Bowe's grades suffered significantly because of the abuse and discrimination. C. Bowe continued to experience poor academic achievement because of the unaddressed bullying and mistreatment described in this complaint.

17. The abuse prevented C. Bowe from fully participating in physical education class (February, 2011) and other classes during his time at ECASD.

18. ECASD denied C. Bowe the opportunity to be a Link Crew Leader in April, 2014 and other extra curricular activities during his time at ECASD.

19. With respect to every educational opportunity denied to C. Bowe, he was qualified to participate.

20. ECASD took no action to improve C. Bowe's grades or participation.

21. The harassment and mistreatment described above created a severe, pervasive and objectively offensive educational environment that deprived C. Bowe of educational opportunities and benefits.

22. The ECASD receives federal funds.

**C.BOWE'S FIRST CAUSE OF ACTION AGAINST ECASD -
VIOLATION OF THE ADA AND THE REHABILITATION ACT**

23. Plaintiff C. Bowe restates the previous paragraphs as if set forth fully herein.

24. By engaging in the conduct described above, ECASD violated the ADA and the Rehabilitation Act when it knowingly allowed a hostile learning environment to exist at ECASD that adversely affected C. Bowe academic achievement, on account of his disability. That is, ECASD responded to C. Bowe's situation in bad faith or with gross misjudgment.

25. ECASD intentionally excluded C. Bowe from educational opportunities because of his disability.

26. The hostile environment has caused C. Bowe severe and permanent economic, physical and emotional injuries.

**C. BOWE'S SECOND CAUSE OF ACTION AGAINST ECASD –
VIOLATION OF TITLES VI AND IX - SEX DISCRIMINATION**

27. Plaintiff C. Bowe restates the previous paragraphs as if set forth fully herein.

28. By engaging in the conduct described above, ECASD violated Titles VI and IX when it allowed a sexually hostile learning environment to exist at ECASD.

29. The hostile environment has caused C. Bowe severe and permanent economic, physical and emotional injuries.

**C. BOWE'S FIRST CAUSE OF ACTION AGAINST O'REILLY AND
OLDENBERG – VIOLATION OF THE EQUAL PROTECTION CLAUSE**

30. Plaintiff C. Bowe restates the previous paragraphs as if set forth fully herein.

31. As described in the complaint above, O'Reilly and Oldenberg acted with deliberate indifference to C. Bowe's complaints about harassment and bullying.

32. As described above, the harassment directed at C. Bowe was directed at him because of his gender (male), because of a perception that he was homosexual, or because of C. Bowe's disability (autism).

33. Allowing harassment against C. Bowe either because of his gender, because of the perception that he was homosexual and / or that he was autistic was not rationally related to a legitimate state interest.

34. Alternatively, C. Bowe was in a class of one: there was no rational basis for to justify the unequal treatment he faced, regardless of his membership in a protected class.

35. Accordingly, Oldenberg violated C. Bowe's rights to equal protection under the law, as implement by 42 U.S.C. sec. 1983, when he was deliberately indifferent to the harassment and mistreatment Bowe faced.

36. This deliberate indifference has caused C. Bowe severe economic and emotional injuries.

WHEREFORE, the plaintiff requests a trial by jury along with the following relief:

- A. Unspecified compensatory and punitive damages;
- B. Any injunctive relief that the Court may deem just and proper to award;
- C. An award of Plaintiffs' reasonable attorneys' fees and costs incurred in this action;
- D. Pre- and post-judgment interest; and
- E. Any other such relief as the Court may deem appropriate.

JURY DEMAND

The plaintiff respectfully requests that this matter be tried before a jury of six (6) competent persons.

Dated this 11th November, 2016.

s/ Paul A. Kinne

Paul A. Kinne

State Bar No.: 1021493

Attorney for Plaintiff

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